IN THE HIGH COURT OF UTTARANCHAL AT NIANITAL

Writ Petition No. 1229 (S/S) of 2005

Sri Roshan Lal Aswal,
son of Sri Prem Singh Aswal
presently working as Teacher
in Junior High School,
Kanthargaon, block – Chamba,
District – Tehri Garhwal. .....Petitioner.

V e r s u s.

1. State of Uttaranchal, through its Secretary, Ministry of Education (Basic), Civil Secretariat, Dehradun.
2. Joint Director of Education, Garhwal Region, Pauri.
3. Director Education Officer, Narendra Nagar, Tehri Garhwal.
4. Additional District Education Officer (Basic) New Tehri, Tehri Garhwal.

.....Respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Pankaj Miglani, learned counsel for the petitioner and learned standing counsel, who has accepted notices on behalf of respondents.

Learned counsel for both the parties are agree to decide the writ petition at its admission stage itself.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Certiorari quashing the order No. Praband – 6/37/Basic/2005-06 dated 28.06.2005 issued by District Education Officer, Tehri Garhwal i.e. respondent no. 3 by which the petitioner has been transferred from Junior High School, Kanthargaon, Block – Chamba, District – Tehri Garhwal to Junior High School, Block – Chamba, District Tehri

Garhwal. The impugned transfer order was passed under the category of teachers against inconsistent subject.

The submission of the petitioner is that petitioner was appointed on regular basis as Assistant Teacher on 30.11.1988 in Primary School, Kyarki and by order dated 31.03.1992 the petitioner was promoted on the post of Assistant Teacher (Science) and transferred to Senior Basic School, Dhauk, District – Tehri Garhwal. Thereafter, the petitioner was attached to the office of Assistant Basic Education Officer. On 19.05.1999, the petitioner was adjusted in Junior High School, Kanthargaon, Block – Chamba, District – Tehri Garhwal. Since 19.05.1999 he is continuing in the said school and on 28.06.2005, District Education Officer, has transferred the petitioner to Junior High School, Khand treating him in the category of inconsistent teacher.

The submission of the petitioner is that by order dated 31.03.1999 he was promoted as Assistant Teacher (Science), as such, he cannot be treated as Assistant Teacher (General).

The second ground on which the leraned counsel for the petitioner has attacked the impugned order is that one Sri Paramjeet Sajwan, who is not a Science Teacher has been transferred to Junior High School, Kanthargaon, Block – Chamba, District – Tehri Garhwal. Learned counsel for the petitioner has admitted that Sri Paramjeet Sajwan is not a Science Teacher and he has not been transferred as Science Teacher to Junior High School, Knathargaon, Block – Chamba, District – Tehri Garhwal, further, he has not joined at Knathargaon, District – Tehri Garhwal.

It is not clear from the record that how many science teachers are working at Kanthargaon, Block – Chamba, District – Tehri Garhwal and what is total sanctioned strength for that school but learned counsel for the petitioner has submitted that

the total sanctioned strength of the teachers in the school is; one head master and four teachers, out of which one is science teacher. Learned counsel for the petitioner has argued that one Sri Virendra Dutt, who is a Science Teacher in the said school was never appointed as Science Teacher.

These facts are not on record and these facts cannot be decided by this court under Article 226 of the Constitution of India in absence of relevant records.

Learned counsel for the petitioner has further submitted that petitioner's son, who is aged about 18 years, has received electric shock on 24.05.2003 and his treatment is still going on. He is unable to move on his own.

Petitioner has already made a representation dated 11.07.2005 to District Education Officer, Tehri Garhwal, which is still pending before respondent no. 3.

In view of the aforesaid circumstances, it is in the interest of justice that District Basic Education Officer, be directed to decide the representation of the petitioner considering all the facts mentioned in the representation and arguments raised by the petitioner in the writ petition.

Accordingly, I direct the District Education Officer, Narendra Nagar, Tehri Garhwal i.e. respondent no. 3 to decide the representation of the petitioner within a period of two weeks from the date of production of certified copy of this order. Till the decision is taken on the representation of the petitioner by the District Education Officer, Narendra Nagar, Tehri Garhwal i.e. respondent no. 3, petitioner shall not be relieved, in case, he has not already been relieved.

With this direction the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 29, 2005
SKSharma